

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION (LODG.) NO.365 OF 2005

M/s.Kalyani Exporters & Ors. ..Petitioners.

Vs.

The Greater Bombay Co-op.

Bank Ltd. & Ors. ..Respondents.

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Mr.S.K.Jain with Mr.Nishit Dhruva with Mr.Prakash
Shinde for the Petitioners.

Mr.V.R.Walavalkar with Mr.Sameer Bhalekar for
Respondent Nos.1 and 2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

1st March, 2005.

P.C. :

1. A recovery certificate was issued on 27th July, 2004 against the Petitioners in pursuance of proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 in the amount of Rs.2,14,06,761/- together with future interest at the rate of 17% per annum from 1st May, 2004 on a

principal sum of Rs.1,87,20,273/-. The recovery certificate was eventually challenged before this Court by the Petitioners herein in a petition under Article 226 (Writ Petition 8011 of 2004). On 1st October, 2004 D.B.Bhosale, J. disposed of the petition in the following terms :

"Petitioner nos.2 to 4, partners of petitioner no.1, have filed affidavit admitting the liability to pay the amount as per the recovery certificate and have provided the Schedule in the affidavit for making payment to the Respondent - Bank. Mr.Bhalekar, learned counsel for the Respondent-Bank, states that the Respondent- Bank has no objection for disposing of this petition in terms of the affidavit. The affidavit of the petitioners is taken on record and marked "X" for identification. The undertakings given in the affidavit are accepted. The writ petition stands disposed of in terms of the undertakings.

Needless to state that the respondent-Bank shall raise the attachment on payment of the

amount by the petitioners as mentioned in the affidavit."

2. An affidavit was filed by the Petitioners before this Court in the earlier proceedings to which there is a reference in the order dated 1st October, 2004 and it was stated in the order that the bank had no objection to the petition being disposed of in terms thereof. Paragraph 3 of the affidavit contained a description of certain non-agricultural land situated at Bheemahalli Village, Ramnagaram Taluka, Bidadi Hubli. In paragraphs 5 and 6 of the affidavit the Petitioners stated and undertook thus:

"5. We say that the aforesaid pieces of land are free from all encumbrances. We hereby undertake that if for any reason we fail to pay Rs.20,00,000/- within 10 days from today or fail to pay the balance amount of Rs.2,08,92,326/- along with interest thereon @ 17% - on or before 31st December, 2004, we shall handover vacant and peaceful possession of the said property to Respondent No.1 and

Respondent No.1 will be at liberty to proceed with the sale of the said property.

6. We further say that if Respondent No.1 for any reason not able to sale the said Bangalore property and/or satisfy their dues after selling the said property then in that eventuality we hereby undertake to handover vacant and peaceful possession of the properties mentioned in Exhibit "F" (Notice dated 23rd September, 2005) annexed to the above Writ Petition herein below to Respondent No.1 subject to mortgage of the IndusInd Bank."

3. On 24th January, 1995, the First Respondent addressed a letter to the Petitioners stating that it had issued an advertisement calling for bids for the Hubli property and that the highest offer which was received was in the amount of Rs.55 lacs. The Petitioners were furnished with an opportunity to obtain a higher bid within seven days of the receipt of the letter failing which it was stated that the bank would proceed with the sale of the property. According to the Petitioners the

aforesaid letter was received on 31st January, 2005 and in response thereto by a letter dated 1st February, 2005 the Petitioners stated that they were in the process of obtaining bids for a higher value. The immediate reason for the institution of these proceedings was that on 31st January, 2005 the recovery officer addressed a letter to the Petitioners recording that the auction notice for the sale of the Hubli property had not evinced a favourable response and that consequently the bank would be taking police assistance for taking possession of certain commercial and residential premises situated at Mumbai, belonging to the Petitioners.

4. According to the Petitioners, the Special Recovery Officer could not have lawfully issued the impugned notice dated 31st January, 2005 since in terms of the undertaking which was furnished by the Petitioners and accepted by the bank it was only if the property at Hubli (wrongly referred to as the property at Bangalore) could not be sold or, if the dues of the bank were not satisfied upon the sale of the Hubli property that possession of the aforesaid properties could have been taken over.

The contention of the Petitioners was that without waiting for even a response from the Petitioners within the stipulated period of one week of the receipt of the bank's communication dated 24th January, 2005, the Bank has purported to threaten a take over of physical possession with police assistance.

5. When this matter came up for admission on 8th February, 2005, counsel appearing on behalf of the Petitioners stated before the Court that the Petitioners had three offers in hand for the property at Hubli of which the highest was in the amount of Rs.1.40 Crores, details whereof were indicated in a letter dated 4th February, 2005 to the Special Recovery Officer. The parties agreed before the Court that in order to furnish to the Petitioners a reasonable and bonafide opportunity to repay the outstanding dues, the following arrangement be made :

"i) Within a period of one week from today, the Petitioners shall produce before the First Respondent a concrete offer by a willing purchaser which shall be accompanied by an

earnest money deposit in the form of a pay order representing 10% of the total consideration for the offer for the sale of the property at Hubli;

- ii) The Petitioners shall ensure that the purchaser pays 40% of the total consideration within a period of three weeks thereafter and the balance within a period of 45 days after the expiry of the period of four weeks;"

6. In the meantime, it has also transpired that possession of the properties referred to in the bank's notice dated 31st January, 2005 has been taken over by the Indusind Bank on 16th October, 2004 under the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Consequently, by the order of this Court dated 8th February, 2005 liberty was granted to the Petitioners to amend the Petition and to implead Indusind Bank as a party Respondent. Thereafter when the matter came up before the Court on 17th February, 2005, the Court was informed that the Petitioners have two offers, the first in the amount of Rs.80 lacs which was accompanied by a Pay

Order of Rs.8 lacs and wherein the offerer had agreed to meet the agreed requirements which were stipulated in the previous order of the Court. The Second offer which was in a higher amount of Rs.111 lacs was, however, one where the offerer had asked for deferred payment, the last payment to be made in July, 2005. The matter was adjourned since the parties considered it appropriate to hold further meetings at the office of the First Respondent in order to explore the possibility of a further enhancement of the bids which had been received.

7. The Court has now been informed that the highest offer is in the amount of Rs. 115 lacs, but the bidder has sought for time until 30th September, 2005 to pay the dues. This is not acceptable to the bank. The payment schedule by which the Hubli property was to be sold is reflected in the agreement between the parties as recorded in the order of this Court dated 8th February, 2005. In the circumstances, it would not be either appropriate or proper for this Court to insist upon the First Respondent agreeing to an offer which involves a deferred payment of consideration, the last instalment whereof is to be

paid only by the end of September 2005. In their affidavit filed before this Court in the earlier proceedings, the Petitioners agreed to pay the entire dues by 31st December, 2004. Having regard to the payment schedule which was agreed upon between the parties on 8th February, 2005, it is clear that the highest offer which meets these conditions is in the amount of Rs.80 lacs. The bank is ready and willing to sell the Hubli property to the aforesaid bidder. However, in order to permit the Petitioners an opportunity to persuade the highest bidder of Rs.115 lacs to accept a schedule for payment in accordance with the terms set out in the order of 8th February, 2005, which were agreed upon by the parties, it is clarified that it would be open to the Petitioners to do so within a period of two weeks from today failing which it would be open to the First Respondent to conclude the sale in favour of the highest bidder who meets the agreed payment schedule. Ordered accordingly. The affidavit which was filed before this Court by the Petitioners on 1st October, 2004 and upon which the earlier petition came to be disposed of by consent, contains an admission of liability in the amount of

Rs.2,28,92,326/- . The Petitioners have paid an amount of Rs.20 lacs which they had agreed to pay in terms of paragraph 2 of the affidavit. The Petitioners had agreed to pay the balance of Rs.2,08,92,326/- together with interest at the rate of 17% per annum on or before 31st December, 2004. The amount has admittedly been not paid in terms of the statement which has been made on affidavit before the Court.

8. The contention of the Petitioners that it was only upon the sale of the Hubli property that the First Respondent could seek possession of the other properties at Mumbai now stands obviated because after a joint exercise carried out by the parties, it does emerge that the Petitioners still would have an outstanding liability of approximately Rs.1.40 Crores or more even after the sale of the Hubli property. Since it has emerged before the Court that the properties at Mumbai have been taken possession of by Indusind Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, Act, 2002, a statement is made on behalf of the First Respondent that the First Respondent shall now take

further steps to which they would be entitled in accordance with law, for the recovery of the dues which remain upon the sale of the Hubli property.

No further directions are necessary.

The Petition is disposed of in these terms.